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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA-MCKINLEYVILLE DIVISION

CALEB HALEY, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC., a
foreign corporation, and SAFEWAY, INC., a
domestic corporation,

Defendants.

NO. 23-cv-2811

**CLASS ACTION COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

- 1. UNFAIR COMPETITION LAW**
- 2. FALSE ADVERTISING LAW**
- 3. CONSUMERS LEGAL
REMEDIES ACT**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1.1 Major grocery retailer Albertsons Companies, Inc. operates hundreds of Safeway branded stores in California. Safeway stores routinely market meat, ice cream, frozen food, coffee, and other products under Buy One, Get One Free promotions. The grocery products offered as part of “Buy One, Get One Free,” or “Buy One, Get Two Free” (collectively

1 “BOGO”) sales rotate frequently. These promotions have been regularly available in California
2 Safeway stores over the last four years. The “free” product is prominently promoted on special
3 point-of-sale ads and on the packaging of the products themselves. But Albertsons and Safeway
4 make consumers pay for the seemingly “free” product.

5 1.2 When Safeway stores offer grocery items under BOGO promotions, they raise the
6 regular retail price of the BOGO grocery products, so that consumers pay substantially more for
7 the first product to cover the cost of the second product that Safeway claims is “free.” As a
8 result, consumers making purchases under these promotions do not get a free product. Instead,
9 they pay more for the product and buy more of the product than they otherwise would to obtain
10 the illusory “free” product.

11 1.3 These “free” sales are unlawful, unfair, or deceptive practices under California’s
12 Unfair Competition Law and are impermissible under California’s False Advertising Law.

13 1.4 Caleb Haley brings this action on behalf of himself and other Safeway shoppers in
14 California who overpaid for products offered as part of a BOGO promotion in the last four years.

15 II. JURISDICTION AND VENUE

16 2.1 Jurisdiction. This Court has jurisdiction over Mr. Haley’s claim under 28 U.S.C.
17 § 1332(d) because Mr. Haley and at least the majority of the class members are citizens of
18 California, while Albertsons Companies is a citizen of Idaho and Delaware, and because the
19 amount in controversy exceeds \$5 million.

20 2.2 Venue. Venue is proper in this District and in Humboldt County because the
21 product giving rise of Mr. Haley’s claims took place in Humboldt County and Safeway and
22 Albertsons regularly transact business in Humboldt County.

23 2.3 Divisional Assignment. Pursuant to L.R. 3-2(c), this action should be assigned to
24 the Eureka Division, as a substantial part of the events giving rise to the claim occurred in
25 Humboldt County.

26 III. PARTIES

27 3.1 Caleb Haley is a natural person residing in Blue Lake, California.

4.6 Common BOGO products include but are not limited to boneless pork chops, chicken breast and thighs, beef steaks, ice cream, coffee, and frozen seafood.

4.7 For example, between March and May 2023, Defendants raised the regular retail price of the following items when offering them as part of a BOGO sale in California:

PRODUCT	REGULAR PRICE	BOGO PRICE
Gorton's Frozen Fish	\$8.99	\$11.99
Peets Coffee	\$8.99	\$13.99
Oreos Cookies	\$4.99	\$6.79
Dreyer's Ice Cream	\$4.00	\$7.49
Haggen-Dazs Ice Cream	\$5.99	\$7.49

4.8 Contrary to the language of Defendants' free product offers, the BOGO products are not actually free. Instead, Defendants increase the price of the first unit of the product to cover the cost of the second—purportedly “free”—unit of the product.

4.9 The Federal Trade Commission has warned that retailers should use “extreme care” when including the word “free” in marketing. 16 C.F.R. § 251.1(a)(2).

4.10 The FTC has further explained that the public understands the offer of “free” merchandise to be based on the regular price of the item. With Buy 1 Get 1 Free offers, the customer believes they are paying nothing more than the regular price for the first item in order to obtain the second. 16 C.F.R. § 251.1(b)(1). The purchaser “has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise . . . by marking up the price of the article which must be purchased.” *Id.*

C. Caleb Haley has made numerous purchases of BOGO products at inflated prices.

4.11 Caleb Haley lives in Blue Lake, California.

4.12 Mr. Haley regularly shops at the McKinleyville, California Safeway.

1 4.13 Mr. Haley looks for bargains when he shops for groceries.

2 4.14 Mr. Haley is a Safeway Club Card member. The last four digits of his telephone
3 number associated with his account are 2733.

4 4.15 Mr. Haley's most recent BOGO purchase at a Safeway store in California was
5 Ben & Jerry's ice cream on April 14, 2023. He used his Safeway Club Card when he made the
6 purchase. Safeway sold the BOGO Ben & Jerry's ice cream to Mr. Haley for \$7.49 per 16 oz.
7 tub. The price for Safeway Club Members for the same item the day before Safeway put the Ben
8 & Jerry's ice cream on BOGO promotion was \$4.00 per 16 oz. tub. The Ben & Jerry's ice cream
9 returned to a lower price immediately after the BOGO promotion ended.

10 4.16 On May 31, 2023, the Safeway Club Card member price for the 16 oz. tubs of
11 Ben & Jerry's ice cream was \$3.99.

12 4.17 Mr. Haley paid Safeway a price premium for the Ben & Jerry's ice cream he
13 bought as part of a BOGO promotion on April 14, 2023.

14 4.18 Mr. Haley also bought 16 oz. tubs of Ben & Jerry's ice cream at the elevated
15 BOGO price of \$7.49 on February 18, 2023, and December 17, 2022.

16 4.19 Mr. Haley bought the Cold Brew Coffee Sorbet flavor or Talenti Ice cream at an
17 elevated BOGO price of \$7.49 on December 9, 2022.

18 4.20 Mr. Haley bought Oreo Double Stuff Family Size cookies at an elevated BOGO
19 price of \$6.79 on December 17, 2022.

20 **V. CLASS ACTION ALLEGATIONS**

21 5.1 Mr. Haley brings this case on behalf of himself and of a proposed Class under
22 Federal Rule of Civil Procedure 23 on behalf of himself and a Class defined as:

23 All persons who, within four years before the date of the filing of
24 this Complaint, bought products sold on a buy one, get one free or
25 buy one, get two free basis ("BOGO sales"), at a Safeway store
located in the State of California using a Safeway Club Card.

26 Excluded from the proposed class are all attorneys for the class and
27 employees of their law firms, the officers or directors of the

1 Defendants, any judge who presides over the case, and all jurors or
2 alternate jurors who sit on the case.

3 5.2 Numerosity: Safeway is one of the largest grocery retailers in California. On
4 information and belief, there are more than 800,000 members of the proposed Class.

5 5.3 Commonality and Predominance: Defendants' BOGO pricing is a standard
6 practice applied in all Safeway and Albertsons stores in California during the class period. As a
7 result, Mr. Haley's claims raise common issues that predominate over individual issues.
8 Adjudication of these common issues in a single action has important and desirable advantages
9 of judicial economy.

10 5.4 Questions of law and fact common to Mr. Haley and the proposed Class include
11 but are not limited to:

- 12 a. Whether Defendants regularly increase the price of BOGO products above
13 the regular retail price for the same products;
- 14 b. Whether Defendants' BOGO sales pricing is unfair or unlawful;
- 15 c. Whether Defendants' BOGO sales pricing is fraudulent or misleading;
- 16 d. Whether Defendants' BOGO sales pricing and promotions omit
17 information—namely that the BOGO price is higher than the regular retail
18 price of the same product;
- 19 e. Whether Mr. Haley and the proposed Class are entitled to a rebuttable
20 presumption of reliance as a result of Defendants' omissions;
- 21 f. Whether Defendants' conduct violates the California Consumer Legal
22 Remedies Act;
- 23 g. Whether Defendants' conduct violates the False Advertising Law;
- 24 h. Whether Defendants' conduct violates California's Unfair Competition
25 law; and
- 26 i. The nature and extent of the injury to the Class and the measure of
27 compensation for such injury.

1 5.5 Typicality: Mr. Haley's claims are typical of the claims of the Class. His claims,
2 like the claims of the Class, arise out of the purchase of BOGO products where consumers did
3 not actually receive a free product because they paid inflated prices for BOGO products, and are
4 based on the same legal and remedial theories.

5 5.6 Adequacy of Representation: Mr. Haley is an appropriate representative for the
6 Class and will fairly and adequately protect the interests of the Class. He understands and is
7 willing to undertake the responsibilities of acting in a representative capacity on behalf of the
8 proposed Class. Mr. Haley has no interests that directly conflict with the interests of the Class.

9 5.7 Mr. Haley has retained experienced trial lawyers with significant experience in
10 complex and class action litigation, including consumer class actions. Mr. Haley and his counsel
11 are committed to prosecuting this action vigorously on behalf of the Class and have the financial
12 resources to do so.

13 5.8 Superiority: Mr. Haley and members of the Class suffered harm and damages as a
14 result of Defendants' unfair or deceptive conduct. Absent a class action, however, most Class
15 members would find the cost of litigating their small dollar claims prohibitive. Class treatment is
16 superior to multiple individual suits or piecemeal litigation because it conserves judicial
17 resources, promotes consistency and efficiency of adjudication, provides a forum for small
18 claimants, and deters illegal activities. The Class members are identifiable from Defendants'
19 records, and there will be no significant difficulty in the management of this case as a class
20 action.

21 5.9 Injunctive Relief: Defendants' conduct is uniform as to all members of the Class.
22 Defendants have acted or refused to act on grounds that apply generally to the Class, so that final
23 injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.
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1 **VI. FIRST CLAIM FOR RELIEF**

2 **Violation of the Consumer Legal Remedies Act – Cal. Civ. Code § 1770**

3 6.1 Mr. Haley incorporates by reference all preceding paragraphs.

4 6.2 Defendants' sales of BOGO products are transactions that resulted in the sale of
5 goods or services to a consumer. Cal. Civ. Code § 1770(a).

6 6.3 Under the CLRA, it is unlawful to advertise goods or services with intent to sell
7 them not as advertised; or make a false or misleading statement about the existence of price
8 reductions. Cal. Civ. Code § 1770(a)(9) and (13).

9 6.4 Defendants' advertisement of BOGO products coupled with Defendants' failure
10 to provide the promised discount violates each of these provisions of the CLRA.

11 6.5 Defendants advertised the BOGO products, but failed to provide the promised
12 discounts, in violation of Section 1770(a)(9).

13 6.6 Defendants made false or misleading statements about the existence of the BOGO
14 discounts when they sold BOGO products at elevated prices, in violation of Section 1770(a)(13).

15 6.7 Mr. Haley brings this claim in furtherance of the public interest. He seeks no
16 more relief for himself than he seeks for all members of the Class.

17 **VII. SECOND CLAIM FOR RELIEF**

18 **(False Advertising Law: Failure to Provide Advertised Discounts - Cal. Bus. & Prof.**
19 **Code §§ 17500)**

20 7.1 Mr. Haley incorporates by reference all preceding paragraphs.

21 7.2 The False Advertising Law prohibits any unfair, deceptive, untrue, or misleading
22 advertising. Cal. Bus. & Prof. Code §§ 17500 et seq.

23 7.3 Defendants used false and misleading advertising to sell BOGO products and then
24 failed to provide the promised discounts when they sold the BOGO products at elevated prices.

25 7.4 Mr. Haley and members of the Class reasonably relied on Defendants' promotion
26 of the BOGO products. The promised BOGO discount was a material term that would induce a
27 reasonable consumer to buy the products. Defendants failed to provide the promised discount.

1 7.5 Defendants knew or should have known that their promise to provide a free
2 product was false or misleading because they raised regular prices when putting products on the
3 BOGO promotion.

4 7.6 Mr. Haley and the members of the Class are entitled to all available relief under
5 Cal. Bus. & Prof. Code § 17535, including restitution and injunctive relief.

6 7.7 Mr. Haley brings this claim in furtherance of the public interest. He seeks no
7 more or less relief for himself than he seeks for all members of the Class.

8 **VIII. THIRD CLAIM FOR RELIEF**

9 **(Unlawful, Unfair, or fraudulent Business Practices in Violation of the UCL -**
10 **Failure to Provide Advertised Discounts)**

11 8.1 Mr. Haley incorporates by reference all preceding paragraphs.

12 8.2 The California Unfair Competition Law (“UCL”) prohibits acts of unfair
13 competition, including business practices that are unlawful, unfair, or fraudulent. Cal. Bus. &
14 Prof. Code §§ 17200 *et seq.*

15 8.3 A business practice that violates any other statute is an unlawful business practice
16 under the UCL.

17 8.4 Defendants’ sale of BOGO products was unlawful under the UCL because the
18 sales violated the CLRA and the False Advertising Law as set forth in detail in Plaintiff First and
19 Second Claims for Relief.

20 8.5 Defendants’ sales of BOGO products are transactions that resulted in the sale of
21 goods or services to a consumer. Cal. Civ. Code § 1770(a).

1 8.6 Defendants' advertisement of BOGO products coupled with its failure to provide
2 the promised discount violates each of these provisions of the CLRA.

3 8.7 Defendants advertised the BOGO products, but failed to provide the promised
4 discounts, in violation of Section 1770(a)(9).

5 8.8 Defendants made false or misleading statements about the existence of the BOGO
6 discounts when they sold BOGO products at prices higher than the regular price, in violation of
7 Section 1770(a)(13)

8 8.9 Under the CLRA, it is unlawful to advertise goods or services with intent to sell
9 them not as advertised or make a false or misleading statement about the existence of price
10 reductions. Cal. Civ. Code § 1770(a)(9), (13).

11 8.10 Defendants' promotion of the BOGO products is impermissible under 16 C.F.R.
12 § 251.1(b)(1).

13 8.11 Advertising that is false and misleading is unfair under the California UCL.

14 8.12 False and misleading statements of fact include omissions of material fact that, by
15 the exercise of reasonable care, should be known to affect the average consumer's decision as to
16 whether to purchase a product.

17 8.13 Defendants' omission of the fact that they raised the regular prices of products
18 when placing them on BOGO promotions is false or misleading.

19 8.14 Mr. Haley and the Class relied on Defendants' BOGO promotional statements
20 when buying groceries. But for Defendants' misrepresentations and omissions, Mr. Haley and
21 any reasonable consumer would have purchased fewer products or would have paid less for those
22 products.

23 8.15 Defendants' misleading statements and failure to disclose that they raise the
24 prices of products sold in BOGO promotions constitute false and misleading statements to the
25 public.

26 8.16 Mr. Haley and the Class lost money or property as a result of Defendants'
27 violations of the UCL when they paid Defendants elevated BOGO prices for grocery products.

8.17 Mr. Haley, members of the Class, and the general public are entitled to all relief available under the UCL, including restitution and injunctive relief because there is no adequate remedy at law.

8.18 Mr. Haley and the Class are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action under California Code of Civil Procedure section 1021.5.

8.19 Mr. Haley brings this claim in furtherance of the public interest. He seeks no more or less relief for himself than he seeks for all members of the Class

IX. PRAYER FOR RELIEF

Plaintiff requests relief as follows:

- A. Actual damages;
- B. Punitive damages;
- C. Injunctive relief prohibiting Defendants from inflating the prices of products offered on BOGO promotions above the regular retail price for those products;
- D. Attorneys' fees and costs of suit;
- E. Prejudgment interest; and
- F. Such other relief as the Court deems just and proper.

X. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 7th day of June, 2023.

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ATTESTATION

Pursuant to Civil L.R. 501(h)(3), the undersigned attests that each of the other Signatories have concurred in the filing of the document.

Dated: June 7, 2023

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